

European Accession & National Law

A New Rule of Law

As of 1 May 2004, Cyprus, together with nine other countries, has been a full member of the European Community. Cypriots have always viewed the island's accession as a tool for solving our political problem, thus failing to focus on the positive legal implications that it will create by conferring rights upon individuals.

The importance of Community law is that it gives rights to individuals, which they can enforce, before national courts.

This opens new doors for both the people of Cyprus and people from abroad who are interested in doing business with or within Cyprus. The responsibility lies with Cypriot legal practitioners to master European law well so that they serve the interests of their clients in the best possible way.

All Member States are bound by the provisions of Community Law, which cannot be overridden by domestic law. In *Costa v Enel* (1964), it was stated that:

“The transfer by the states from their domestic legal system to the Community legal system of rights and obligations arising under the Treaty carries with it the permanent limitation of their sovereign rights against which a subsequent unilateral act incompatible with the concept of the Community cannot prevail.”

The role of enforcement of EC law has shifted to a great extent from the European Commission to the citizens of Europe. An individual may not only seek redress against his country by reporting an infringement to the Commission. Member States may find themselves liable for damages towards individuals should they fail to implement a directive or if their laws and constitution are not in line with EC law.

An individual may bring a legal action before the national court against the state in a case where he has suffered damages as result of the state's failure to implement an EC law or as a result of legislating against the EC law. An individual may also invoke an EC provision before a national court in support of his claim.

One of the first cases on this matter is *Van Gend en Loos v Nederlandse Administratie der Belastingen* (1963). The matter here was raised in connection with the infringement of one of the provisions of the Treaty. A legal action was brought against the Dutch customs authorities by a private firm before a Dutch court. The firm tried to use Community Law in support of their claim. The matter was referred to the European Court of Justice (ECJ) for a ruling. The Dutch government tried to maintain that an infringement of the treaty does not give individuals the right to bring an action. In this case, it was held that a new legal order was created by the Treaty and it created rights for individuals which became part of their legal heritage.

In the above case, the Dutch government was in breach of article 25, according to which Member States must not introduce any new customs duties on imports and exports.

In another case - Alfons Lutticke GmbH v Commission (1966) - it was decided that a state can be liable towards an individual for not implementing an EC law once the time limit for implementation has expired.

In Defrenne v Sabena (No.2) (1976), it was decided that a horizontal direct effect of the EC Treaty is also possible, that is, an individual may invoke EC law in his claim not only against his state but also against another individual before a national court. In this case, an action was brought against SABENA by an air stewardess based on article 141, according to which men and women should receive equal pay for equal work.

In the case of regulations according to article 249, they are directly applicable in Member States without the need to implement them through national legislation unless such implementation is required by the regulation itself or if a Member State wishes to codify it.

Generally speaking however, directives must be implemented before they have a direct effect unless, of course, their limit for implementation has expired and the Member State has failed to implement them. This weakness has been dealt with by the ECJ by creating the concept of indirect effect.

As I mentioned above, a state can be found liable for not implementing a directive. In one case in Italy, the employees of an insolvent company claimed damages against the Italian government for failing to set up a compensation scheme to protect employees of insolvent employers according to a directive. This is an example of an indirect effect of the provisions of a directive. The indirect approach was covered in various ECJ decisions. According to the ECJ, national courts have an obligation, pursuant to Art. 10 (formerly 5), to interpret national legislation in accordance with the aims and purposes of directives.

The state can also be liable if it implements a directive in an incorrect manner.

Apart from directives and regulations, decisions issued by the Council or Commission are also binding on all those to whom they are addressed as well as international agreements with non -Member States, even if they are not directly effective in the non-Member State

The ECJ recently decided that a state may also be liable towards an individual if its judiciary does not follow EC law. A university professor brought a legal action against the Republic of Austria claiming damages because of an erroneous decision by the Supreme Administrative Court Of Austria. The Austrian Government opposed the application on the grounds, inter alia, that a decision of a Supreme Court could not give rise to state liability. The matter was referred to the ECJ. With regard to the state's liability for damages, the ECJ, by applying previous decided cases, ruled that it applied to any case where there is a breach of Community law, even when the breach derives from a decision by the Supreme Court. Kobler v Republik Osterreich (case C-224/01) 30 09/03.

An important way to achieve the uniformity of EC law and an effective weapon at the hands of the citizens for protecting their rights is the referral of questions of interpretation of treaties and the validity of secondary legislation to the European Court of Justice for preliminary rulings during litigation in national courts. The national court is bound to follow the ruling. Article 234, para. 2 provides that 'any court or tribunal' has the discretion to request a preliminary reference. However, a court against whose decision there is no judicial remedy is obliged to make a preliminary reference under Article 234(3). In the case of Cyprus, such a court is the Supreme Court. The only drawback for the referral of issues to the ECJ for rulings is the delay that it takes place until the ruling is issued due to the ECJ's heavy workload.

The purpose of this article was not to give an in-depth analysis of the principles pertaining to direct effect and the supremacy of EC law but merely to give some food for thought and to emphasise that it is of great importance and great urgency for legal practitioners in Cyprus as well as judges to familiarise themselves with the new rule of law and to use the provisions of EC law so that the rights of individuals are protected in the most effective and consistent way. What is absolutely certain is that as of 1 May 2004, no authority in Cyprus will be above EC law, including the judiciary. Everybody should adjust to the idea that EC law also prevails over our Constitution. People will have available remedies they did not have in the past. Individuals though must be made aware of their directly effective rights in order to pursue them.

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